

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.93 of 2014

A.Chandrasekaran

..Appellant/Plaintiff

Vs.

1. Deivam

2. Sauthri

..Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Subordinate Judge, Harur, dated 18.10.2012 in A.S.No.26 of 2012, confirming the judgment and decree of the learned District Munsif, Harur, dated 20.03.2012 in O.S.No.196 of 2009.

For Appellant : Mr.N.Vijaya Baskar for
M/s.Law vision

For Respondents: Mr.R.Selvakumar

J U D G M E N T

The plaintiff whose suit for specific performance was dismissed by the trial Court, upon its confirmation by the lower appellate Court, has come forward with this second appeal.

2. The case of the plaintiff is that the defendant had entered into an agreement of sale, agreeing to convey the suit property measuring about 82 cents along with the share in the Well and Motor pump set, for a consideration of Rs.1,00,000/- on 13.02.1996. The terms of the agreement were reduced into writing and the same was also registered. It is the further case of the plaintiff that he had paid an advance of Rs.90,000/- leaving a balance of Rs.10,000/-. A period of 10 months was fixed for balance payment of sale consideration and execution of sale deed. The plaintiff had issued a notice on 29.11.1996 requiring the defendants to be present in the Sub-Registrar Office on 12.12.1996 for receiving the balance sale consideration and to execute the Sale deed. But, there was no reply from the defendants to the said legal notice. Thereafter, the plaintiff again issued a second notice on 14.09.1999 calling upon the defendants to receive the balance sale consideration and to execute the sale Deed. Since the defendants did not come forward to execute the Sale Deed, the plaintiff has sued for specific performance.

3. The suit was resisted by the defendants contending that the plaintiff is running a finance business in the name and style "ACS finance Corporation" at Salem. The 1st defendant had borrowed certain sums from the plaintiff and the plaintiff obtained the sale agreement as a security for repayment of the amount. Therefore, according to the defendants, the suit agreement dated 13.02.1996 was not intended to be acted upon as an agreement of Sale, but the same was executed as security for the repayment of monies borrowed by the defendants. The defendants would also contend that the plaintiff had issued notices on 08.06.1996 and 02.07.1996 demanding repayment of monies borrowed by them from the plaintiff. On the above contentions, the defendants sought for dismissal of the suit.

4. At trial, the plaintiff examined himself as P.W.1 and one Gururajan has been examined as P.W.2. The 1st defendant has been examined as D.W.1 and one Viswanathan as D.W.2. The plaintiff produced Exs.A1 to A6, the defendants produced Ex.B1 and B2.

5. The trial Court upon consideration of the evidence on record, came to a conclusion that the suit agreement was not intended to be acted upon as a agreement of sale. It was, in fact, executed as a security for loan transaction. In coming to the said conclusion, the trial Court took note of Exs.B1 and B2 namely letters dated 08.06.1996 and 02.07.1996 under which the plaintiff had demanded repayment of the monies borrowed by the defendants from him. The trial Court also take note of the fact that even after issuing a notice on 29.11.1996, the plaintiff had not sued for specific performance immediately. He chose to wait for 2 years 9 ½ months and issued a second notice on 14.09.1999, seeking execution of the Sale Deed. The said inaction on the part of the plaintiff was also taken note of by the trial Court in coming to the conclusion that the agreement dated 13.02.1996 was not intended to be a Sale agreement. On the above conclusion, the learned trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.26 of 2012. The lower Appellate Court on re-consideration of the evidence on record, agreed with the conclusion of the trial Court and dismissed the appeal.

6. Aggrieved, the plaintiff has come forward with the second appeal.

7. Notice of motion was ordered on 06.03.2014. Upon service Mr.R.Selvakumar, learned counsel has entered appearance for the respondents.

8. I have heard Mr.N.Vijaya Baskar, learned counsel for the appellant and Mr.R.Selvakumar, learned counsel for the respondents.

9. Mr.N.Vijaya Baskar, learned counsel for the plaintiff / appellant would contend that the Courts below erred in coming to the conclusion that the said agreement was intended to serve as a security for repayment of the loan and was not intended to be a sale agreement. He would also contend that Section 92 of the Evidence Act bars a party from adducing evidence against the recitals recitals in a written registered instrument.

10. I have considered the submissions of the learned counsel appearing for the appellant.

11. On the questions of law raised by the plaintiff, Section 92 of the Evidence Act, does not create an absolute bar. Proviso 1 to Section 92 of the Evidence Act, allows a party to prove any circumstance which may invalidate the document. This Court as well as the Hon'ble Supreme Court have repeatedly held that it is open to the defendants, in a suit for specific performance to plead and prove that the agreement was not intended to be acted upon as a sale agreement and the same was executed in favour of the plaintiff only to serve as a security for loan transaction.

12. The facts of the case narrated above would themselves militate against the plaintiff. The total consideration fixed at Rs.1 laksh. 90% of the sale consideration viz., Rs.90,000/- was paid on the date of agreement itself. A unduly long period of 10 months was fixed for payment of the balance sale consideration of Rs.10,000/-, the plaintiff though had issued a notice on 29.11.1996 demanding specific performance, did not chose to sue for specific performance immediately and thereafter, he chose to wait for another 2 years, 9 ½ months to issue a second notice on 14.09.1999 and followed it up by the present suit. This conduct of the plaintiff, as rightly pointed out by the Courts below, leads to the inference that the suit agreement was not intended to be acted upon as a sale agreement and the same was executed only in order to serve as security for the loan transaction. The fact that the plaintiff has written to the defendant on 08.06.1996 and 02.07.1996 under Exs.B1 and B2, demanding repayment of the loan would itself show that there were loan transactions between the parties. Admittedly, the plaintiff is a partner in a finance company at Salem. The suit properties are situated at Dharmapuri District.

13. The circumstances definitely justify the conclusion of the Courts below and I do not see any perversity in the findings of the Courts below. The findings of the Courts below being factual in nature, I do not think, I can interfere with them in the second appeal even if any other view is possible. I do not find any question of law much less a substantial question of law to enable me to entertain the second appeal.

14. Hence, the second appeal is dismissed without being admitted. There will be no order as to costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

vum

To

1. The Subordinate Judge,
Harur.

2. The District Munsif,
Harur.

+1 CC to M/s. Law Vision, sr 87050.

+1 Cc to Mr.R.Selvakumar, Advocate sr 86559.

S.A.No.93 of 2014

RV(CO)
SP(03/03/2020)